

2024:PHHC:151713



**219 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-A- 2621-2019 (O&M)
Date of Decision: 14.08.2024**

RAVINDER SINGH

.....APPLICANT/APPELLANT

VERSUS

BACHITTER SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Ms Amandeep Kaur, Advocate for
Mr. G.S. Sandhu, Advocate
for the Applicant/Appellant.

SANDEEP MOUDGIL, J

1. Learned counsel for the appellant by filing the present appeal, under Section 378(4) Cr.P.C, has assailed the judgment dated 10.07.2019, passed by the Judicial Magistrate Ist Class, Patti, dismissing the complaint and acquitting the respondent-accused therein of the charges framed against him under Section 138 of the Negotiable Instruments Act,1881 (for short 'the Act').

2. In a nutshell case leading to the filing of present petition unfolds as that the complainant/appellant had friendly relation with each other on that account accused/respondent obtained a loan of Rs.9,60,000/-. In order to discharge his liability, the accused issued a cheque bearing No.034973 dated 01.07.2016 for an amount of Rs.9,60,000/- drawn at Axis Bank, Branch

said cheque for encashment, the same got dishonoured with the remarks “Funds insufficient” vide memo dated 06.07.2016 Thereafter, the accused was served upon legal notice dated 26.08.2016 to make the payment but he defaulted and therefore this present complaint was filed.

3. Learned counsel for the appellant contends that the judgment passed by the trial Court suffers from grave illegality, perversity and the same is based upon surmises and conjectures and as such the same is liable to be set aside. It is further contended that the trial Court gave the benefit of acquittal to the respondent-accused on the ground that there are certain discrepancies in the version of the complainant, which culminated into being the defence of accused probable and trustworthy. Such an erroneous finding deserves to be set aside as the trial Court has utterly failed to appreciate the well proven oral as well documentary evidence of the complainant.

4. It is further contended that the learned trial Court failed to appreciate that the respondent-accused has himself admitted his signature on the impugned cheque. It is well settled position in law that once an accused admits his signatures on the cheque, then, it can legally be presumed that the cheque has been issued in discharge of a legally enforceable debt. The presumption under Section 139 of the N.I. Act, 1881 in the present case is very strong in favour of the applicant-appellant, but in spite of that, the trial Court returned a finding of acquittal while dismissing the complaint in question solely on the ground that the complainant failed to prove his financial capacity to advance such a huge amount. Despite being a fully proven case, the trial Court has wrongly and illegally acquitted the accused. Hence, the impugned judgment dated 10.07.2019 is liable to be set aside.

5. I have heard learned counsel for the applicant/appellant and gone through the record.

6. From perusal of the judgment, this Court has recorded certain discrepancies, which doubts the complainant's/appellant's story. The complainant has not mentioned any date, month, or year of advancing the friendly loan to the accused/respondent which he alleges to have advanced in his complaint. However, he mentioned about a friend namely Lakhbir singh CW2 which he got examined to prove his stance that in presence of CW2 the money was advanced to the accused but this witness has also not come handy to complainant as when he was cross examined he deposed that he is not aware that from where the said amount was arranged by the complainant. Further the attention of this court was drawn to the fact that there was some dispute going on between complainant and accused regarding lotteries and committee therefore it is highly improbable that the complainant would advance such a huge amount to the accused, that too without any writing or security. Besides the complainant has failed to prove his financial capacity to advance such a huge amount. . Thus, he is unable to establish a legally enforceable debt against the accused regarding the cheque. Now this version creates a serious doubt on the story of the prosecution and raises a probable defence in favour of the accused, who very rightly has able to rebut the presumption under Section 139 of Negotiable Instruments Act.

7. This court finds no reason to disbelieve the contentions of the respondent inasmuch as the appellant has failed to prove that the cheque was issued against the legally enforceable debt and moreover the defence put by the accused is supported by substantial proof and the accused has been able to raise a cogent doubt regarding the truthfulness of the issuance of the cheque in question and once the presumption under sections 118(A) and 139 of the Act of 1881 stands rebutted by the accused. The burden is upon the complainant to prove that the cheque was issued by the accused in discharge

of any existing legal liability which the appellant/complainant has failed to prove.

8. It is a settled law as held in “*C.Antony v. K.G.Raghavan Nair, 2002 (4) RCR (Criminal) 750*” that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

9. On perusal of the judgment passed by the trial Court dated 10.07.2019, this Court is of the considered view that the said judgment is based upon the proper appreciation of the evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, requiring any interference by this Court. The allegations have been found to be not proved beyond reasonable doubt by the evidence which has been led by the prosecution and, therefore, the benefit of doubt has rightly been granted to the accused-respondent.

10. Accordingly, the leave to appeal stands declined.

11. Dismissed.

(SANDEEP MOUDGIL)
JUDGE

14.08.2024
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<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether Reportable</i>	:	<i>Yes/No</i>